



DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 05 - 2018

SUBJECT: Procedures for Appointment of Individuals to Department of Labor Appellate Boards

1. Purpose. To provide for transparent and consistent processes by which the Secretary of Labor shall select and appoint individuals to the three appellate boards within the Department of Labor.

2. Authorities and Directives Affected.

A. Authorities. This Order is issued pursuant to the following authorities:

- i. 29 U.S.C. § 551 *et seq.*;
- ii. 5 U.S.C. §§ 301-02.

B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, including but not limited to Order 02-2012 (77 Fed. Reg. 69378) and Order 03-2006 (20 C.F.R. § 801.201).

3. Background. The Secretary has the authority and responsibility to appoint the members of the Department's three appellate boards: the Administrative Review Board (ARB), the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB).

These appointments should be made through a transparent and consistent process. Accordingly, this Order establishes procedures by which these appointments shall be made.

4. Responsibilities.

- A. The Assistant Secretary for Administration and Management, in consultation with the Deputy Secretary, is assigned responsibility for issuing written guidance, as necessary, to implement this Order.
- B. The Solicitor of Labor is responsible for providing legal advice to DOL on all matters arising in the implementation and administration of this Order.

5. Procedure. The following procedures shall apply to the selection and appointment of individuals to the ARB, BRB, and ECAB:

- A. A notice of vacancy and solicitation of applications shall be posted in the Federal Register and on the relevant Board's website. The vacancy shall be held open for a minimum of thirty days, during which applications shall be accepted. The notice shall specify: the name of the board; the type of appointment; the duration, if any, of the appointment; the minimum criteria for appointment; the documentation an applicant must submit for consideration; the deadline by which such documentation must be submitted; and the email address and/or physical address where documentation may be submitted.
- B. Applications will be directed to the Office of Executive Resources (OER) within the Office of the Assistant Secretary for Administration and Management (OASAM) to be screened for whether an applicant has timely submitted all required documentation and meets the minimal qualifications for the position,

including vetting potential ethics concerns such as conflicts of interest in consultation with ethics counsel.

- C. OER will deliver qualified applications to a six-person review panel. The members of the panel will be selected by the Secretary or the Secretary's designee,¹ and will consist of three career and three non-career Department employees who are members of the Senior Executive Service. The Department's Director, Human Resources Center, or her designee, shall be present for each meeting of the panel.
 - D. The panel will review the qualified applications, and rank the candidates. The panel will send the applications of the top-ranked candidates to an interview committee, which will be comprised of the Deputy Secretary and a career ethics attorney from Office of the Solicitor.
 - E. The interview committee will interview the top-ranked candidates and recommend to the Secretary which candidate should be chosen for the position. The interview committee will also provide the Secretary with the resumes of the other top-ranked candidates it interviewed but did not recommend. The Secretary shall make the final decision and appointment, or may instead order another candidate search be completed.
- 6. Privacy.** This Order is subject to the applicable laws, regulations, and procedures concerning the privacy of applicants to federal government employment.

¹ In the absence of specific Secretary's designee, the Solicitor of Labor shall be the designee.

7. **Exceptions.** The requirements of this Order are intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other legal authority governing a particular board. In the event of a conflict, the specific statute, Executive Order, or other legal authority shall govern.
8. **Redelegation of Authority.** Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated in order to serve the purposes of this Order.
9. **Effective Date.** This order is effective immediately.

Dated: June 1, 2018.

R. Alexander Acosta,
Secretary of Labor.

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